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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/708,993      | 11/07/2000  | William R. Kowalski  | 2000-2              | 3145             |

7590

05/29/2002

Martin E Hsia  
P O Box 939  
Honolulu, HI 96808

EXAMINER

WEINSTEIN, STEVEN L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1761

DATE MAILED: 05/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/708993

Applicant(s)

KOWALSKI

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-31 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-31 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-31 are rejected under 35 USC 112, first paragraph as being based on a non-enabling disclosure. As disclosed, the products packaged are cut pieces of fish that are "substantially triangular pie shaped with two flat sides and a curved surface there between and wherein the cut pieces of fish are packaged between rigid supports that are sufficiently rigid, shaped and dimensioned to be configured to receive the two flat sides and with the cut fish and support enclosed in a vacuum bag, the cut fish is supported without deforming or misshaping the original substantially triangular pie shaped, shape of the cut fish. This appears to be applicant's invention as disclosed, and claims that do not include this concept appear to be non-enabling. Further, in regard to claims 1, 2, 4, 28, 29, etc., as disclosed, it is not only the product but also the rigid supports that are sealed in plastic. In claim 3, 4, etc. it is not clear what "contoured" surface means in this regard. As disclosed, the surface other than the flat surfaces, is curved or arcuate. In claim 5, what is the relationship between the flexible membrane surface and the rest of the elements of the claims? Similarly for claim 6 and claim 30.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 8/3-27/3 are rejected under 35 USC 112, second paragraph as being indefinite. The claims contain a number of examples of lack of antecedent basis. For example, in claim 1, said tuna loin "lacks antecedent basis." Similarly, claim 21/3, 22/3, 25/3, 26/3, and 27/3 lack antecedent basis for the phrases "said fillet" or "said loin".

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bass (GB 2231322) in view of Pierson et al (2809896), Comer (5,164,211), applicant's admission of the prior art and Wetmore (2,041,586).

Bass discloses the combination of a rigid support, cut fish and vacuum bag. The claims differ from Bass in the shape of the rigid support which, as recited in various ways and as disclosed, assumes roughly the cross-sectional shape of two sides of the product. As evidenced by Comer, it is well established to provide supports or inserts which are fashioned to assume the shape of the product to be packaged. Even Pierson et al who discloses a rigid support to maintain the shape of the product to be packaged, provides a support that roughly mimics the cross-sectional shape of the product. Since applicant's admission of the prior art teaches the cross-section cut product is well established in the art, to provide a support having the conventional cross section shape of the product would have been an obvious matter of design. Wetmore

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is relied on to show triangular pie shaped cuts are, of course, conventional. The particular dimensions, surface area, etc. all seem to have been obviously determinable through routine experimentation.

The remainder of the references cited on the USPTO 892 forms are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday--Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh  
May 24, 2002  
5/20 -> 5/22  
Corrected

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
5/28/02